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Written statement* submitted by the Penal Reform International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The question of the death penalty

Penal Reform International (PRI)[1] welcomes the High Level Panel on the Question of the Death Penalty. We will focus in this statement on the conditions on death row and the impact these conditions have on the rights and wellbeing of prisoners and their families.

Although they should enjoy the same rights as other prisoners under international human rights standards and norms, prisoners on death row are often detained in conditions that are far worse than those for the rest of the prison population. They suffer isolation for long and indeterminate periods of time, inactivity, inadequate basic physical provisions, have limited links and contacts with their relatives and lawyers, and are sometimes treated violently and without respect for human dignity.

Prisoners are often held on death row for many years while they go through lengthy appeal procedures, or when a state has suspended executions but has not abolished the death penalty or commuted existing sentences. As a result of these conditions, as well as the stress of facing a death sentence, death row prisoners are vulnerable to mental strain and physical and emotional neglect for months, years, and even decades.

Conditions on death row often amount to cruel, inhuman or degrading treatment or punishment, as prohibited in Article 7 of the ICCPR. Some or all of these conditions can also contribute to 'death row phenomenon', which is characterised by spending long periods of time in restrictive conditions while awaiting death. In 1989 the European Court of Human Rights found the 'death-row phenomenon' constituted inhuman and degrading punishment.[2] The Court found that exposing persons 'to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty (...) would expose [them] to a real risk of treatment going beyond the threshold set by article 3 [of the European Convention on Human Rights]'.[3]

The UN Human Rights Committee has expressed concern about poor living conditions of death row inmates, including undue restrictions on visits and correspondence,[4] small cell size and lack of proper food and exercise,[5] extreme temperatures, lack of ventilation, cells infested with insects, and inadequate time spent outside cells,[6] and has called on states to improve these conditions in line with the requirements of the provisions of the ICCPR, including Article 7 (prohibition of torture and cruel, inhuman or degrading treatment) and Article 10(1) (respect for the human dignity of persons deprived of their liberty).

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment declared the overcrowding, extreme temperatures, inadequate nutrition and isolation typical of the experience of death row prisoners may amount to cruel treatment.[7] The Special Rapporteur also identified the practice of handcuffing and shackling with leg irons of death row inmates 24 hours per day and in all circumstances (i.e. including during meals, visits to the toilet, etc.) as inhuman and degrading, and serving only as an additional form of punishment of someone already subjected to the stress associated with having been sentenced to death.[8]

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[1] Penal Reform International (PRI) is an international, non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC) and the Council of Europe, and Observer Status with the African Commission on Human and People's Rights and the Inter-Parliamentary Union. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI also works for the prevention of torture and ill-treatment, for a proportionate and sensitive response to women and juveniles in conflict with the law, and promotes the abolition of the death penalty.

[2] *Soering v. UK*, Series A, No. 161, 7 July 1989, para. 111.

[3] Article 3 of the ECHR prohibits torture, and inhuman or degrading treatment or punishment.

[4] UN document CCPR/CO/79/Add.102, 19 November 1998, para. 21.

[5] UN document CCPR/CO/71/UZB, 26 April 2001, para. 10.

[6] *Safarmo Kurbanova v. Tajikistan*, views of the Human Rights Committee, Communication No. 1096/2002, UN document CCPR/C/79/D/1096/2002, 12 November 2003, para. 7.8.

[7] UN document E/CN.4/2006/6/Add.4, 20 December 2005.

[8] UN document E/CN.4/2006/6/Add.6 (10 March 2006), para. 68.

Death row prisoners are entitled to the same basic conditions as other categories of prisoners, as set out in the UN Standard Minimum Rules for the Treatment of Prisoners[9] and elsewhere. Their treatment and care in prison should be determined by individual need rather than the type of sentence they are serving, which may indeed require them to receive a higher standard of treatment. In resolution 1996/15,[10] the UN ECOSOC urged UN member states to apply the Standard Minimum Rules for the Treatment of Prisoners 'in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering'.

Additionally, the knowledge of having a relative detained on death row can be deeply distressing for the children and other family members of persons sentenced to death. Children can experience psychological, behavioural, financial, educational and (physical and mental) health problems related to a parent's death sentence, including PTSD (post-traumatic stress disorder) symptoms. Such impacts can happen at any stage of the criminal justice process. Having a parent at risk of execution appears to be more consistently negative and damaging for children than having a parent imprisoned. Children's right to a relationship with parents from whom they are separated (Article 9, Convention on the Rights of the Child) can in practice be denied by restrictive regulations on visits to death row, including inaccessible locations of prisons, heavy limits on the frequency of visits and age restrictions on who can visit death row.

PRI would like to recall the position of the Human Rights Committee, mentioned in the 2013 report of the UN Secretary-General on the Question of the Death Penalty (A/HRC/21/29), that states should provide convicted persons and their family members with advance notice of the date and time of execution. Further, states should allow family members, particularly children, a final visit to say goodbye; this visit should be private and allow physical contact between the convicted person and family members.

For those whose (potential) death sentence is replaced by a period of imprisonment, whether at time of sentencing or later, many of the same problems may remain. Sentences should provide the offender with a meaningful opportunity for rehabilitation and reintegration back into society, which means there should be the possibility of release. Conditions of imprisonment for prisoners serving life or long-term imprisonment are often worse than for other categories of prisoner, and punitive conditions of detention and less favourable treatment are known to be particularly prevalent for reprieved death row prisoners. Examples include separation from the rest of the prison population, inadequate living facilities, excessive use of handcuffing, prohibition of communication with other prisoners, inadequate health facilities, extended use of solitary confinement and limited visit entitlements.

The level of security applied to life-sentenced prisoners should be based on an individual risk and needs assessment, rather than having a single regime for life-prisoners. Not all life-sentenced prisoners are, for instance, dangerous and need to be detained in high security prisons or segregated from other categories of prisoner. The realities in fact often indicate otherwise: the majority of life-sentenced prisoners are generally better behaved in prison compared to other categories of prisoner, and have lower reconviction rates on release.[11]

For further information of international standards and norms related to prison conditions, see Penal Reform International's information pack on *Alternative Sanctions to the Death Penalty: Life and Long-Term Imprisonment.*

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[9] Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the UN ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[10] Adopted by the UN ECOSOC on 23 July 1996.

[11] See, for example, *Management of Long-term and Life- Sentenced Prisoners Internationally in the context of a Human Rights Strategy*, Andrew Coyle (2005) in N. Browne and S. Kandelia (eds.) *Centre for Capital Punishment Studies occasional paper series three: managing effective alternatives to capital punishment*, London: CCPS; or *Alternatives to the death penalty – the United Kingdom Experience in Council of Europe*, Hodgkinson, P., in *Death Penalty: beyond abolition* Strasbourg: Council of Europe: 2004.